CF0000061036

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

GA 2006/96 2

APPEAL OF PRISONER

Division Bench (Criminal)

No. 4510/53 Name ...

Father's name ...

Residence ... Age ... 45 ...

Sentenced to ... On ... 19/7/96 ...

Under section ... by ...

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ...

2 Date on which copy received ...

3 Date on which Appeal sent ... 1/10/96 ...

4 Whether the prisoner wishes to be represented or ~~not~~ - Yes / No

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No. 4510/53 Name ...

Confined in ... Jail ...

No. 832 1.CRW/96 Dated 23/10/ 1996

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ ...

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

Superintendent
Central Jail, Jaipur. (M.P.)
23/9

Date of receipt in ... office ... Dy. Registrar 19/11/96
23/10/96

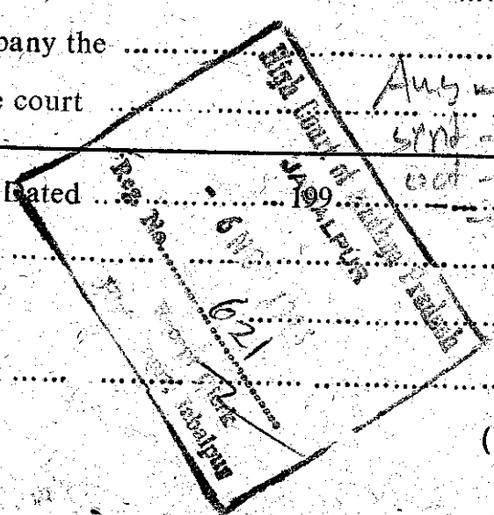
Date of receipt record to accompany the ...

Memo of Appeal to the Appellate court ... Aug - 12
Sept - 30
Oct - 23

No ... Dated ... 199 ...

Forwarded to the ... 65
60

Date of receipt in Appellate Court ...



(P. T. O.)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक G.A.2006/96 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित.	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

7-3-2006

Mr. Surya Kant Mishra, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. M.P.S. Bhatia, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J: -

By this appeal under Section 374 (2) of the Code of Criminal Procedure, accused/appellant Motilal has questioned legality & correctness of the judgment of conviction and order of sentence dated 19-8-1996 passed by the Additional Sessions Judge, Manendragarh, in Sessions Trial No.261/94, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the Indian Penal Code, sentenced him to undergo imprisonment for life and pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for two years.

The case of the prosecution, in brief, is that deceased Asha Kumari herself made a report Ex.P-3A in Police Station: Manendragarh on 31st March, 1994 at about 1.40 a.m. to the effect that she is residing along with her husband Motiram in Village: Moharpara and her husband is working as a painter. Her husband came after finishing the work and her daughter after taking her meal

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

went for sleep in the adjoining house. At about 10.30 p.m. her husband bolted the room from inside and set her on fire after pouring kerosene on her body, as he was doubting her fidelity on the ground that she was having physical relations with nephew of the accused. Her whole body viz., back portion, chest, waist and hands are burnt. After opening the door, she has come directly to the Police Station.

Receiving this report, the Station House Officer, Police Station: Manendragarh left for the scene of occurrence and deceased Asha Kumari was sent to the hospital Manendragarh, where she died on 8-4-1994. In the mean time, the dying declaration (Ex.P-3) of the deceased was recorded by Executive Magistrate Kashi Ram Gupta (PW-5). The Investigating Officer took into possession one lamp, one matchbox, burnt blouse of the deceased and one terricot sari of the deceased under Ex.P-4. One plastic bottle from which smell of kerosene was emanating was taken into possession under Ex.P-5 from the house of the accused. One ten rupees burnt currency note was also taken into possession under Ex.P-6. After the death of the deceased, post-mortem was conducted by Dr. R.S. Bhojak (PW-4) and he prepared the post-mortem report Ex.P-2. The Panchnama (Ex.P-1) of the body of Asha Kumari was prepared by the Investigating Officer.

After completion of investigation, charge sheet was filed against the accused in the Court of Additional Chief Judicial Magistrate, Manendragarh, who in turn committed the case to the Sessions Judge, Surguja, from where learned

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Additional Sessions Judge, Manendragarh, received the case on transfer for trial.

The prosecution in order to prove the case against the accused examined eight witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him.

After hearing counsel for the parties, learned Additional Sessions Judge convicted and sentenced the accused as mentioned in para 1 of this judgment.

We have heard Mr. Surya Kant Mishra, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr. M.P.S. Bhatia, learned Panel Lawyer on behalf of the State/respondent.

As far as involvement of the accused in committing the murder of his wife Asha Kumari is concerned, in the first instance, Asha Kumari herself lodged the report (Ex.P-3A) in the Police Station and narrated the circumstances under which her husband set her on fire after pouring kerosene on her body. Thereafter, the dying declaration (Ex.P-3) of Asha Kumari was recorded by Executive Magistrate Kashi Ram Gupta (PW-5) who has stated in his evidence that on 31st March, 1994, he recorded the dying declaration of Asha Kumari which is Ex.P-3 and the same was recorded after obtaining certificate from the doctor that she was competent to give statement. In Ex.P-3, the dying declaration, it is categorically mentioned that at about 10.30 p.m. Motiram after

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pouring kerosene on the body of Asha Kumari set her on fire. On enquiry by the Executive Magistrate, deceased Asha Kumari has further stated that the accused used to doubt her fidelity on the ground that she is having physical relations with his nephew. Kashi Ram Gupta (PW-5) who recorded the dying declaration has not been cross-examined. Therefore, there is nothing on record to doubt the dying declaration

Moreover, Badri Prasad (PW-1) has stated in his evidence that in the fateful night at about 12 noon he heard the shout of Asha Kumari that the accused has set her on fire on which he ran towards the house of the deceased and saw that the room was closed from inside. Dulari Bai & Mangal also came on the spot and they saw that the accused was present with the deceased in the room, they got opened the door of the room and Asha Kumari came out of the room in burnt condition. She was wearing only petticoat and she directly went to the Police Station. Similar is the evidence of Dulari Bai (PW-2) and she has stated in her evidence that the deceased informed her that the accused has set her on fire.

Neetu Yadav (PW-7), daughter of the deceased, has stated in her evidence that on the fateful day she went for sleep in the adjoining house and in the night she heard the shout of her mother, she was saying that the accused has set her on fire. People from the vicinity also came on the scene and she saw that her mother was lying in burnt condition in the house, the accused was also present there.

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Therefore, the dying declaration made by deceased Asha Kumari stands corroborated by the evidence of the above witnesses that the accused was present in the house. The deceased has categorically stated that the accused set her on fire after pouring kerosene on her body on the ground that he was doubting her fidelity. Dr. R.S. Bhojak (PW-4) has stated in his evidence that he conducted post-mortem on the body of Asha Kumari on 8-4-1994 and there were 56% burns on the body and she died on account of burn injuries.

In the circumstances, it is established that the deceased died on account of the burn injuries and she was set on fire by the accused after pouring kerosene on her body. For the foregoing reasons, we are of the considered opinion that there is no illegality or infirmity in the judgment of the trial Court.

In the result, the appeal is devoid of merit, same is dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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21/2/06 23.4.06